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SUBJECT: U.S. CANDIDATE NOT ELECTED TO THE INTERNATIONAL LAW COMMISSION (ILC)

REF: A. USUN 2111

1B. STATE 187689

¶1. Summary. In a General Assembly election, November 16, the U.S. candidate missed being elected to the International Law Commission by eight votes. Michael Matheson placed ninth among 11 candidates seeking to fill eight Western seats on the Commission. European Union candidates took six of the eight seats in this group (plus three more - including one candidate country from the East European Group). The remaining two went to a Canadian and Swiss. Results of voting in all groups follows at para 9. End Summary.

¶2. In one round of voting, the General Assembly elected all 34 members of the International Law Commission. To be elected, a WEOG candidate had to receive a majority of the votes of those present and voting (abstentions don't count) in a General Assembly secret ballot and place among the top eight in the group. Although the U.S. candidate, Michael Matheson, easily surpassed the required majority, he was not among the top eight.

¶3. USUN lobbied actively for Matheson, contacting all delegations with whom we do business in New York, most at the Ambassadorial level. On November 9, Amb. Bolton held a well attended reception to introduce the candidate. By the time voting took place USUN had received 132 commitments (enough for sixth place): 67 written confirmations of support and 65 verbal promises. Although it is impossible to be sure of votes in a secret ballot, indications are that African and smaller South and East Asian states provided the most support. As predicted (Ref A, para 5), missing was a sound base of support from our own regional group. Among the 28 members of the WEOG, Belgium, Germany, and Greece told us that they would not be voting for Matheson. Only ten (Andorra, Australia, Canada, Finland, Iceland, Ireland, Israel, Liechtenstein, Monaco, and Turkey) committed in writing to support him. Austria, Italy, Malta, Netherlands, New Zealand, Portugal, Spain, and Switzerland were non-committal despite several requests and the rest gave only verbal indications of support. From the 23 member Eastern European Group, there were twelve written pledges of support (Albania, Armenia, Azerbaijan, Bulgaria, Croatia, Latvia, Macedonia, Moldova, Montenegro, Poland, Slovakia, and Slovenia). Estonia and Serbia were contacted but gave non-committal responses and the remaining group members said that they would support the U.S. candidate.

¶4. Comment: The 34 member Commission will now be very European Union centered with nine of its member/candidates elected: six EU Western Group members (France, Germany, Italy, Portugal, Sweden, and United Kingdom) and Eastern Group members (Slovenia, Poland, and Romania) including two EU members and Romania which is an EU candidate country. End Comment.

¶5. The group dynamic was also evident in shaping the fate of

other unsuccessful WEOG candidates. Neither the Greek nor the Turkish candidate was elected and their group affiliations probably played a part. It is likely that the Greek pulled EU votes from the Turk and that the Organization of the Islamic Conference members cast their votes for the Turk but did not support the Greek. (Cyprus is a sensitive political issue in both groups.) Other political factors may also have had an effect in shaping the result, as is often the case in UN elections. Italian and Swiss Mission Legal Advisers attributed the U.S. candidate's loss to the fact that "some delegations wanted to make a political statement."

This may have been an element in the poor showing of support from Asian Group Arabs. Only Lebanon, Oman, and Yemen sent notes pledging support for the U.S. candidate. (In North Africa, Algeria and Libya did.)

¶6. The other P-5 candidates were all elected, as has traditionally been the case. The last time a P-5 candidate for a UN legal position was not re-elected was in 1986 when UK candidate Sir Ian Sinclair was defeated in an ILC election. During the period from 1993-2005 there were nine instances in contested elections for other bodies when P-5 members from the Western Group were not elected to seats allocated to that group. In 1995, the French and UK candidates were defeated in their bids to obtain seats on the Advisory Committee on Administrative and Budgetary Questions (ACABQ). In 2001, the French candidate was not elected to the Joint Inspection Unit (JIU). The U.S. candidates suffered similar losses in elections for the ACABQ (1996, 1998), the JIU (1999), and the International Narcotics Control Board (2001). The U.S. was not elected to the Commission on Human Rights in 2001 and the Commission on the Status of Women in 1994.

¶7. Many of the candidates from other regional groups for

whom the U.S. voted (Reftel B) were elected. Results in the Eastern European group were predictable with four candidates for four seats. Six of the eight members elected from the African Group were U.S. choices as were five of the seven Asians elected. In the Latin American and Caribbean Group, the U.S. supported five of the six successful candidates.

¶8. Comment. Matheson lost by fewer than ten votes among the 190 cast. Nevertheless, the result, in particular the U.S. loss as a P-5 member, raises the question of whether the U.S. should continue to provide financial support to this UN activity, which is funded by the UN's regular budget. End Comment.

¶9. ILC Election Results:

WEOG	
*UK	156 votes
*Germany	154
*Canada	149
*Sweden	146
*Italy	144
*Portugal	133
*France	127
*Switzerland	121
U.S.	114
Greece	107
Turkey	96

AF	
*Egypt	153
*Kenya	153
*Tunisia	152
*Mozambique	148
*South Africa	148
*Nigeria	137
*Mali	134
*Cameroon	133
Gabon	131
Libya	129

ASIA
*Japan 144
*India 141
*China 140
*Qatar 138
*Sri Lanka 138
*Indonesia 135
*Jordan 122
Iran 92
Syria 90
Lebanon 66
Philippines 60

GRULAC
*Jamaica 173
*Brazil 170
*Argentina 164
*Costa Rica 163
*Ecuador 155
*Columbia 150
*Chile 144
Honduras 141

Eastern Europe
*Russia 185
*Poland 182
*Romania 177
*Slovenia 177

*-- denotes successful candidate
BOLTON